

TBOTE Proposed Rules – PDF of proposals as published in the March 18, 2016 Issue of the *Texas Register*

Introduction:

The pages that follow were originally published in the March 18, 2016 issue of the [*Texas Register*](#).

On the last page appears the graphic for the proposed amendment to §373.3, Supervision of an Occupational Therapy Assistant, which is the chart of OTA Required Supervision Hours with proposed changes.

Please note that only the second chart on the page, labeled “Figure: 40 TAC §373.3(b)(2)(F)(ii),” pertains to the OT Board’s proposed rules. The first chart is from another agency’s proposal.

(k) Contract for less than 12 calendar months. An individual eligible to accrue lifetime service credit who works for a state agency under a formal written contract for less than 12 calendar months each year accrues 12 calendar months of credit each year if the individual is constantly under contract during the calendar months the individual does not work. The individual is constantly under contract if the individual's contract for the next work period is entered into before the end of the existing work period, even though the individual will not work during the interim period.

(l) Military service. If an individual leaves a position that accrues lifetime service credit (or that would have accrued lifetime service credit had the longevity pay law been in effect when the individual left the position) to serve in the military and the individual is reemployed with the state after completing that service in accordance with any applicable federal or state veterans' reemployment law, the individual accrued lifetime service credit during that service.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2016.

TRD-201601028

Don Neal

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: April 17, 2016

For further information, please call: (512) 475-0387

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §362.1, concerning definitions. The amendment will clarify existing definitions with regard to and add a definition for telehealth. Proposed amendments to §372.1, concerning provision of services, and §373.1, concerning supervision of non-licensed personnel, have also been submitted to the *Texas Register* for publication regarding the inclusion in the Board Rules of telehealth as a mode of occupational therapy service delivery. The definitions in §362.1 for "direct contact" and "first available examination" have also been removed. The definitions have been renumbered when necessary so that they appear in alphabetical order; general clarifications, cleanups, and grammatical revisions have been made to the section, as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline has also determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the expansion of occupational

therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendment may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§362.1. Definitions.

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.

(2) ~~[(4)]~~ Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Occupations Code.

(3) ~~[(2)]~~ AOTA--American Occupational Therapy Association.

(4) ~~[(3)]~~ Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

(5) ~~[(4)]~~ Board--The Texas Board of Occupational Therapy Examiners (TBOTE).

(6) ~~[(5)]~~ Certified Occupational Therapy Assistant (COTA®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR® or OT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it by maintaining certification with NBCOT.

(7) ~~[(6)]~~ Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) A fine not to exceed \$4,000;

(B) Confinement in jail for a term not to exceed one year; or

(C) Both such fine and imprisonment (Vernon's Texas Codes Annotated Penal Code §12.21).

(8) ~~[(7)]~~ Client--The entity that receives occupational therapy; also may be known as patient. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as a caregiver, teacher, parent, employer, spouse), groups, or populations (i.e., organizations, communities).

(9) ~~[(8)]~~ Complete Application--Application [Notarized application] form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(10) [(9)] Complete Renewal--Contains renewal fee, renewal form with [signed] continuing education submission form [affidavit], home/work address(es) and phone number(s), [and] jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(11) [(10)] Continuing Education Committee--Reviews and makes recommendations to the Board [board] concerning continuing education requirements and special consideration requests.

(12) [(11)] Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

[(12)] Direct Contact--Refers to contact with the client which is face-to-face in person.]

(13) Endorsement--The process by which the Board [board] issues a license to a person currently licensed in another state[, the District of Columbia,] or territory of the United States that maintains professional standards considered by the Board [board] to be substantially equivalent to those set forth in the Act, and is applying for a Texas license for the first time.

(14) Evaluation--The process of planning, obtaining, documenting and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.

(15) Examination--The Examination as provided for in Section 17 of the Act. The current Examination is the initial certification examination [Examination] given by the National Board for Certification in Occupational Therapy (NBCOT).

(16) Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.

(17) Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

[(18)] First Available Examination--Refers to the first scheduled Examination after successful completion of all educational requirements.]

(18) [(19)] Intervention--The process of planning and implementing specific strategies based on the client's desired outcome, evaluation data and evidence, to effect change in the client's occupational performance leading to engagement in occupation to support participation.

(19) [(20)] Investigation Committee--Reviews and makes recommendations to the Board [board] concerning complaints and disciplinary actions regarding licensees and facilities.

(20) [(21)] Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the Board. [board.]

(21) [(22)] Jurisprudence Examination--An examination covering information contained in the Texas Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners Rules. [rules.] This test is an open book examination with multiple choice and/or [or] true-false questions. The passing score is 70%.

(22) [(23)] License--Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

(23) [(24)] Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive

disorders, or post surgical status. Synonymous with the term health care condition.

(24) [(25)] NBCOT--National Board for Certification in Occupational Therapy.

(25) [(26)] Non-Licensed [Non-licensed] Personnel--OT Aide or OT Orderly or other person not licensed by this Board [board] who provides support services to occupational therapy practitioners and whose activities require on-the-job training and [close personal] supervision.

(26) [(27)] Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which do [does] not require the routine intervention of a physician.

(27) [(28)] Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life and contributing to the social and economic fabric of their communities.

(28) [(29)] Occupational Therapist (OT)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist or one who is designated as an Occupational Therapist, Registered (OTR®).

(29) [(30)] Occupational Therapist, Registered (OTR®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas by maintaining registration through NBCOT.

(30) Occupational Therapy Assistant (OTA)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA®) or an Occupational Therapy Assistant (OTA).

(31) Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(32) [(31)] Occupational Therapy Practice--Includes:

(A) Methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.

(v) Prevention of barriers to performance, including disability prevention.

(B) Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).

(ii) Habits, routines, roles and behavior patterns.

(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.

(iv) Performance skills, including motor, process, and communication/interaction skills.

(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:—

(i) Therapeutic use of occupations, exercises, and activities.

(ii) Training in self-care, self-management, home management and community/work reintegration.

(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.

(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.

(v) Education and training of individuals, including family members, caregivers, and others.

(vi) Care coordination, case management and transition services.

(vii) Consultative services to groups, programs, organizations, or communities.

(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.

(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.

(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.

(xi) Driver rehabilitation and community mobility.

(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

[(32) Occupational Therapy Assistant (OTA)—An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA®) or an Occupational Therapy Assistant (OTA).]

[(33) Occupational Therapy Plan of Care—A written statement of the planned course of Occupational Therapy intervention for a patient/client. It must include goals, objectives and/or strategies, rec-

ommended frequency and duration, and may also include methodologies and/or recommended activities.]

(33) [(34)] Occupational Therapy Practitioners—Occupational Therapists[,] and Occupational Therapy Assistants licensed by this Board. [board.]

(34) [(35)] Outcome—The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(35) [(36)] Place(s) of Business—Any facility in which a licensee practices.

(36) [(37)] Practice—Providing occupational therapy as a clinician, practitioner, educator, or consultant to clients located in Texas at the time of the provision of occupational therapy services. Only a person holding a license from this Board [TBOTE] may practice occupational therapy in Texas, and the site of practice is the location in Texas where the client is located at the time of the provision of services.

[(38) Accredited Educational Program—An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.]

(37) [(39)] Rules—Refers to the TBOTE Rules.

(38) [(40)] Screening—A process used to determine a potential need for occupational therapy interventions, educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

(39) Telehealth—A mode of service delivery for the provision of occupational therapy services through the use of visual and auditory, synchronous, real time, interactive electronic information or communications technologies. As a mode of service delivery, telehealth is contact with the client and the occupational therapy practitioner(s). Telehealth refers only to the practice of occupational therapy by occupational therapy practitioners who are licensed by this Board with clients who are located in Texas at the time of the provision of occupational therapy services. Also may be known as other terms including but not limited to telepractice, telecare, telerehabilitation, and e-health services.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601123

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 17, 2016

For further information, please call: (512) 305-6900



CHAPTER 367. CONTINUING EDUCATION

40 TAC §§367.1 - 367.3

The Texas Board of Occupational Therapy Examiners proposes amendments to §§367.1 - 367.3, concerning continuing educa-

tion, categories of education, and continuing education audit. The amendments would remove the Type 1 and Type 2 continuing education designations and the requirement that licensees earn a minimum of fifteen contact hours of continuing education in Type 2 activities. The proposed amendments instead would require that all of the required 30 hours of continuing education taken for license renewal fit the new definition for continuing education, defined in the amendment to §367.1 as professional development activities that are directly relevant to the profession of occupational therapy. Proposed amendments to §370.3, concerning restoration of a Texas license, and §371.2, concerning retired status, have also been submitted for publication in the *Texas Register* and include proposed changes to reflect the changes in the proposed amendment to §§367.1 - 367.3.

The amendment to §367.2 would also add the NBCOT Navigator™ activities of Case Simulations, Balloon Match Games, Mini Practice Quizzes, and the PICO Game as acceptable continuing education activities. In addition, the amendments would allow for grant writing, general cooking classes, and geriatric anthology to be taken for continuing education if meeting the requirements for continuing education in Chapter 367. The amendments would add first aid as an unacceptable activity that may not be completed for continuing education. The amendments include further clarifications and cleanups, as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Maline has also determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that these proposed amendments are published in the *Texas Register*.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. All activities taken to complete this requirement [continuing education] must [be directly relevant to the profession of occupational therapy and] meet the definition of continuing education [Type 1 or Type 2] as outlined in this section. The licensee is solely responsible for keeping accurate documentation of all continuing education requirements and for selecting continuing education as per the requirements in this chapter.

(b) All licensees must complete a minimum of 30 hours of continuing education every two years during the period of time the license

is current in order to renew the license and must provide this information as requested.

(c) Those renewing a license more than 90 days late must submit proof of continuing education for the renewal.

(d) Definition [Types] of Continuing Education. Continuing education in this chapter is defined as professional development activities that are directly relevant to the profession of occupational therapy.

[(1) A minimum of 15 hours of continuing education must be in skills specific to occupational therapy practice with clients hereafter referred to as Type 2.]

[(A) Type 2 courses teach occupational therapy evaluation, assessment, intervention or prevention and wellness with clients.]

[(B) All continuing education hours may be in Type 2, but no less than 15 hours of Type 2 is acceptable.]

[(2) General information hereafter referred to as Type 1 continuing education is relevant to the profession of occupational therapy. Examples include but are not limited to: supervision, education, documentation, pharmacology, quality improvement, administration, reimbursement and other occupational therapy related subjects.]

(e) Each continuing education activity may be counted only one time in two renewal cycles [or a total of four years].

(f) Educational [Effective January 1, 2003, Type 1 and Type 2 educational] activities that meet the criteria for continuing education as per this chapter that are approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved by the Board. The Board will review its approval process and continuation thereof for educational activities by January 2005 and at least once each five-year period thereafter.

(g) Licensees are responsible for choosing [Type 1 or Type 2] CE according to the provisions [definitions] in this chapter [section].

§367.2. Categories of Education.

(a) All continuing education activities undertaken by a licensee for renewal must comply with the definition of continuing education [Type 1 or Type 2] as outlined in §367.1 of this title (relating to Continuing Education) and[. Continuing education undertaken by a licensee for renewal] shall be acceptable if falling under [it falls in] one or more of the following categories.

(1) Formal academic courses related to occupational therapy.

(A) Completion of course work at or through an accredited college or university shall be counted as follows: three CE hours for each credit hour of a course with a grade of A, B, C, and/or P (Pass). Thus a three-credit course counts for 9 contact hours of continuing education[. All college course work must comply with Type 1 and Type 2 as outlined in §367.1 of this title], no maximum. Documentation of this type of CE credit shall include a transcript from the accredited college or university.

(B) Creation of a new course at or through an accredited college or university may be counted for 10 hours maximum. Proof of this type of CE shall be a letter from the Program Director.

(2) In-service educational programs, training programs, institutes, seminars, workshops, facility based courses, and conferences in occupational therapy with specified learning objectives. Hour for hour credit on program content only, no maximum. Documentation of this type of CE credit shall include a certificate of completion or letter of verification.

(3) Development of publications, media materials or research/grant activities per two year renewal period: Documentation of this type of CE credit shall include a copy of the actual publication or media material(s), or title page and receipt of grant proposal.

(A) Published scholarly work in a peer-review journal:

(i) Primary or second author, 15 hours maximum.

(ii) Other author, consultant, reviewer, or editor, 5 hours maximum.

(B) Grant or research proposals accepted for consideration:

(i) Principal investigator or co-principal investigator, 10 hours maximum.

(ii) Consultant or reviewer, 4 hours maximum.

(C) Published book:

(i) Primary author or book editor, 15 hours maximum.

(ii) Second or other author, 7 hours maximum.

(iii) Consultant or reviewer, 5 hours maximum.

(D) Published book chapter or monograph:

(i) Primary author, 7 hours maximum.

(ii) Second or other author, consultant, reviewer, or editor, 2 hours maximum.

(E) Author, consultant, reviewer, or editor of other practice related publications such as newsletters, blogs, and trade magazines, 2 hours maximum.

(F) Developer of practice-related or instructional materials using alternative media such as video, audio, or software programs or applications to advance the professional skills of others (not for proprietary use), 15 hours maximum.

(4) Home study courses, educational teleconferences, Internet-based courses, and video instruction, no maximum.

[(A) Courses must fit the criteria for continuing education for Type 1 or Type 2.]

(A) [(B)] These courses must have:

(i) Specified learning objectives;

(ii) A post-test; and

(iii) A certificate of completion.

[(B) [(C)] Educational teleconferences or Internet courses must reflect a pre-determined number of contact [credit] hours.

(5) Presentations [Professional presentations] by licensee: Documentation of this type of CE credit shall include a letter of verification of presentation and number of hours for the presentation or copy of organization's brochure or conference guide noting the presentation, presenter(s), type of presentation (i.e.: 2 hour poster, 3 hour workshop).

(A) Professional presentation, e.g. in-services, workshops, institutes: Any presentation counted only one time. Hour for hour credit. 10 hours maximum.

(B) Community/Service organization presentation: Any presentation counted once. Hour for hour credit. 10 hours maximum.

(6) Fieldwork Supervision: 10 hours maximum[, Type 2].

(A) A licensee may earn 2 contact hours for each Level 1 student supervised:

(i) 40 hours of Level 1 equals 1 hour of CE; or

(ii) 80 hours of Level 1 equals 2 hours of CE.

(B) A licensee may earn 8 contact hours for each Level 2 student supervised:

(i) 8 weeks equals 6 hours of CE; or

(ii) 12 weeks equals 8 hours of CE.

(C) A licensee may earn a maximum of 10 contact hours for student supervision per renewal period.

(D) Fieldwork supervision hours may be evenly divided between licensees, not to exceed two fieldwork educators per student.

(E) Fieldwork education supervision must be completed before the licensee's renewal date.

(F) Documentation of this type of CE credit shall include verification provided by the school to the fieldwork educator(s) with the name of the student, level of fieldwork, school, and dates or hours of fieldwork or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.

[(G) Courses specific to fieldwork education are counted as Type 1.]

(7) Mentorship:

(A) Participation as a mentor or mentee for the purpose of the development of occupational therapy skills by a mentee under the guidance of a mentor skilled in a particular occupational therapy area. Both the mentor and mentee must hold a regular OT or OTA license in a state or territory of the U.S. Supervision hours as per §373.3 of this title (relating to Supervision of an Occupational Therapy Assistant) are not eligible for continuing education hours.

(B) Documentation shall include a signed mentorship agreement between a mentor and mentee that outlines specific goals and objectives and designates the plan of activities that are to be met by the mentee; the names of both mentor and mentee and their license numbers and issuing states; an activity log that corresponds to the mentorship agreement and lists dates and hours spent on each objective-based activity; a final evaluation of the outcomes of the mentorship agreement completed by the mentor; and a final evaluation of the outcomes of the mentorship agreement completed by the mentee.

(C) Participation as a Mentee: A licensee may earn one hour of CE for each 3 hours spent in activities as a mentee directly related to the achievement of goals and objectives up to a maximum of 15 CE hours.

(D) Participation as Mentor: A licensee may earn one hour of CE for each 5 hours spent in activities as a mentor up to a maximum of 10 CE hours.

(8) Participation in volunteer activities related to occupational therapy including service on a committee, board, or commission of a state occupational therapy association, AOTA, NBCOT, or TBOTE for the purpose of tangible outcomes such as official documents, publications, and official reports. Documentation of this type of CE credit shall include a copy of the actual publication or official document/report which reflects the licensee's name. [This type of CE is counted at Type 1.] Maximum of 10 contact hours.

(9) NBCOT Navigator™ Activities: Licensees may earn up to 2 contact hours of CE for the completion of the NBCOT Navigator

activities of Case Simulations, Balloon Match Games, Mini Practice Quizzes, and the PICO Game. For such activities, 1 NBCOT CAU is the equivalent of .25 CE hours. Documentation of this type of CE is a certificate of completion or letter of verification.

(10) [(9)] Any deviation from the continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60 days prior to expiration of the license.

(b) Unacceptable Continuing Education Activities include but are not limited to:

(1) Any non-instructional time frames such as breaks, meals, introductions, and pre/post testing.

(2) Business meetings.

(3) Exhibit hall attendance.

(4) Reading journals.

(5) Courses such as: [grant writing,] massage therapy, general management and business, social work, defensive driving, water safety, team building, leadership, GRE, GMAT, MCAT preparation, [general cooking classes,] reading techniques, [geriatric anthology,] general foreign languages, communicable diseases, patient abuse, disposal of hazardous waste, patient privacy, CPR, First Aid, HIPAA, FERPA, bloodborne pathogens, or similar courses, do not count toward continuing education.

(c) [(6)] Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.

§367.3. Continuing Education Audit.

(a) The Board shall select for audit a random sample of licenses. The audit will cover a period for which the licensee has already completed the continuing education requirement.

(b) Licensees randomly selected for the audit must provide to TBOTE appropriate documentation within 30 days of notification. [Audit documentation submitted must be identified by the licensee to specify whether it is Type 1 or Type 2.]

(c) The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. Continuing education documentation must be maintained for two years from the date of the last renewal for auditing purposes[, or a total of four years].

(d) Continuing education documentation includes, but is not limited to: an official transcript, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, and certificates of completion.

(e) Documentation must identify the licensee by name, and must include the date and title of the course, the name and signature of the authorized signer, and the number of contact hours awarded for the course. When continuing education units (CEUs), professional development units (PDUs), or other units or credits are listed on the documentation, such must be accompanied by documentation from the continuing education provider noting the equivalence of the units or credits in terms of contact hours.

(f) Knowingly providing false information or failure to respond during the audit process or the renewal process is grounds for disciplinary action.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601130

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 17, 2016

For further information, please call: (512) 305-6900

CHAPTER 370. LICENSE RENEWAL

40 TAC §370.3

The Texas Board of Occupational Therapy Examiners proposes an amendment to §370.3, concerning restoration of a Texas license. The amendment would clarify requirements for restoration of an occupational therapist or occupational therapy assistant license expired one year or more. The amendment would also remove the requirement that an individual whose license has been expired two or more years must also complete forty-five hours of continuing education if choosing the method of restoration requiring that the individual take and pass the National Board for Certification in Occupational Therapy (NBCOT) exam for licensure purposes only. The amendment also removes from a provision related to expedited services for military service members, military veterans, and military spouses, necessitated by Senate Bill 1307 from the 84th Legislative session, the requirement that to be eligible for such services, the military service member, military veteran, or military spouse, as defined in Chapter 55, Occupations Code, §55.001, must have within the five years preceding the restoration application date held a license in Texas. The amendment, in addition, clarifies that restoration requirements are based on the length of time the license has been expired and whether the individual has a current license or occupational therapy employment as specified in this section at the time of the license's restoration. Any reference to Type 2 Continuing Education has also been removed as part of the proposal in accordance with proposed amendments to §§367.1 - 367.3, concerning continuing education, which have also been submitted to the *Texas Register* for publication. The amendment includes further cleanups, as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline has also determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendment may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Exam-

iners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§370.3. Restoration of a Texas License.

(a) Restoration of a license expired one year or more [than one year] to a person with a current license or occupational therapy employment:

(1) The Board may restore a license to a person whose Texas license has been expired [more than] one year or more if the person:

(A) is currently licensed in another state or territory of the U.S. and that license has not been suspended, revoked, cancelled, surrendered or otherwise restricted for any reason; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration [make] application form as [for licensure to the Board on a form] prescribed by the Board, which includes a recent passport-type photo;

(B) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board. If not currently licensed in another state or territory of the U.S. and applying from the U.S. military or a non-licensing state or territory of the U.S., the person must submit a Verification of Employment form substantiating occupational therapy employment for at least two years immediately preceding application for a Texas license;

(C) pass the online [Board] jurisprudence exam; and

(D) pay the restoration fee, [as set by the Executive Council]; and

[(E) complete all requirements for licensure within one year from the date of application-]

(b) Restoration of a license expired at least one year but [more than one year and] less than two years to a person without a current license or occupational therapy employment:

(1) The Board may restore a license expired at least [more than] one year but [and] less than two years to a person who was licensed in Texas and:

(A) is not currently licensed in another state or territory of the U.S.; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration [make] application form as [for licensure to the Board on a form] prescribed by the Board, which includes a recent passport-type photo;

(B) submit copies of the completed continuing education showing 45 hours of continuing education as per Chapter 367 of this title (relating to Continuing Education) [with a minimum of 30 hours in Type 2];

(C) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board;

(D) pass the online [Board] jurisprudence examination; and

(E) pay the restoration fee, [as set by the Executive Council]; and

[(F) complete all requirements for licensure within one year from the date of the application-]

(c) Restoration of a license expired [more than] two years or more to a person without a current license or occupational therapy employment:

(1) The Board may restore a license expired [more than] two years or more to a person who was licensed in Texas and:

(A) is not currently licensed in another state or territory of the U.S.; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration [make] application form as [for licensure to the Board on a form] prescribed by the Board, which includes a recent passport-type photo;

(B) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board;

(C) pass the online [Board] jurisprudence exam;

(D) pay the restoration fee [as set by the Executive Council]; and

[(E) complete all requirements for licensure within one year from the date of application; and]

(E) [(F)] satisfy one of the following:

(i) complete a re-entry course through an accredited college or university and submit the certificate of completion or transcript to the Board;

(ii) obtain an advanced or post-professional occupational therapy degree, with an official transcript sent to the Board; or

(iii) take and pass the NBCOT examination for licensure purposes only (after requesting Board approval to take the examination) and have the passing score reported to the Board directly by NBCOT. [In addition, copies of the completed continuing education showing 45 hours of continuing education as per Chapter 367 of this title (relating to Continuing Education); with a minimum of 30 hours in Type 2, must be submitted.]

(d) The Board shall expedite the restoration of a license to a military service member, military veteran, or military spouse [who within the five years preceding the application date held a license in Texas]. To request expedited services, the military service member, military veteran, or military spouse must submit a copy of the Uniformed Services Military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation. In this section, "military service member," "military veteran," and "military spouse" have the meaning as defined in Chapter 55, Occupations Code, §55.001.

(e) The licensee whose license has been restored may provide occupational therapy services according to the terms of the license upon online verification of current licensure and license expiration date from the Board's license verification web page. The Board will maintain a secure resource for verification of license status and expiration date on its website.

(f) The restoration fee as set by the Executive Council is nonrefundable. [non-refundable.]

(g) Restoration requirements must be met within one year of the Board's receipt of the application. Restoration requirements are based on the length of time the license has been expired and whether the individual has a current license or occupational therapy employment as specified in this section at the time of the license's restoration.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601128

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 17, 2016

For further information, please call: (512) 305-6900

CHAPTER 371. INACTIVE AND RETIRED STATUS

40 TAC §371.1, §371.2

The Texas Board of Occupational Therapy Examiners proposes amendments to §371.1 and §371.2 concerning inactive status and retired status. The amendments to §371.1 would clarify requirements regarding inactive status and specifies that inactive status fees for an occupational therapist or occupational therapy assistant license are nonrefundable. The amendments would specify that if the inactive status license has been expired one year or more, in order to return to active status, the individual must follow the procedures to restore the license according to §370.3, concerning restoration of a Texas license, amendments which have also been submitted for publication in the *Texas Register*. The amendments would also add the provision that licensees on inactive status are subject to the audit of continuing education as described in §367.3, concerning continuing education audit. The amendments to §371.2 would clarify requirements regarding retired status and specifies that retired status fees for an occupational therapist or occupational therapy assistant license are nonrefundable. The amendments would also add the provision that licensees on retired status may provide occupational therapy services according to the terms of the license

upon online verification of current licensure and license expiration date from the Board's license verification web page. Any reference to Type 2 continuing education has also been removed as part of the proposal in accordance with proposed amendments to §§367.1 - 367.3, concerning continuing education, categories of education, and continuing education audit, which have also been submitted to the *Texas Register* for publication. The proposed amendments to §371.1 and §371.2 include cleanups and grammatical revisions, as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Maline has also determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that these proposed amendments are published in the *Texas Register*.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§371.1. Inactive Status.

(a) Inactive status indicates the voluntary termination of the right to practice occupational therapy by a licensee in good standing with the Board [board]. The Board [board] may allow an individual who is not actively engaged in the practice of occupational therapy to put an active [a] license on inactive status at the time of renewal. A licensee may remain on inactive status for no more than three renewals or six consecutive years[;] and may not represent himself [him] or herself as an occupational therapist or occupational therapy assistant [Occupational Therapist or Occupational Therapy Assistant].

(b) Required components to put a license on inactive status are:

(1) a completed [Signed] renewal application form as prescribed by the Board documenting completion of the required continuing education as described in Chapter 367 of this title (relating to Continuing Education); [and]

(2) the [The] inactive status fee and any late fees that [which] may be due; and[.]

(3) a [A] passing score on the online jurisprudence exam.

(c) Requirements for renewal of inactive status. An inactive licensee must renew the inactive status every 2 years. The components required to maintain the inactive status are:

(1) a completed [Signed] renewal application form as prescribed by the Board[;] documenting completion of the required con-

tinuing education as described in Chapter 367 of this title (relating to Continuing Education); [and]

(2) the inactive status [The] renewal fee and any late fees that [which] may be due; and[-]

(3) a [A] passing score on the online jurisprudence exam.

(d) Requirements for reinstatement to active status. A licensee on inactive status may request to return to active status at any time [after the licensee has submitted a complete application for reinstatement]. The components required to return to active status are:

(1) a completed [Signed paper] renewal application form as prescribed by the Board;

(2) the [The] renewal fee and any late fees that [which] may be due;

(3) a [A] passing score on the online jurisprudence exam; and

(4) proof [Proof] of the required continuing education, if required.

(e) If the inactive status license has been expired one year or more, in order to return to active status, the individual must follow the procedures to restore the license according to §370.3 of this title (relating to Restoration of a Texas License).

(f) The inactive status fees and any late fees as set by the Executive Council are nonrefundable.

(g) Licensees on inactive status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).

[(e) If the licensee has not completed the required continuing education; he or she may follow the methods to restore the license according to §370.3 of this title (relating to Restoration of a Texas License).]

§371.2. Retired Status.

(a) The Retired Status is available for an occupational therapy practitioner whose only practice is the provision of voluntary charity care without monetary compensation.

(1) "voluntary charity care" means occupational therapy services provided as a volunteer with no compensation, for a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. This includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in the community, including these type of organizations with a Section 501(c)(3) or (4) exemption from federal income tax, some Chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(2) "compensation" means direct or indirect payment of anything of monetary value.

(3) The designation used by the retired status licensee is Occupational Therapist Registered, Retired (OTR, Ret) or Occupational Therapist, Retired (OT, Ret), or Certified Occupational Therapy Assistant, Retired (COTA, Ret) or Occupational Therapy Assistant, Retired (OTA, Ret).

(b) To be eligible for retired status, a licensee must hold a current license on active or inactive status or an active or inactive license that has been expired less than one year.

(c) Requirements for initial retired status are:

(1) a completed retired status [and notarized] application form as prescribed by the Board;

(2) a passing score on the online jurisprudence exam;

(3) the completed continuing education for the current renewal period; and

(4) the retired status application fee and any late fees that [which] may be due.

(d) Requirements for renewal of retired status. A licensee on retired status must renew every two years before the expiration date. The retired occupational therapy practitioner shall submit:

(1) a completed [the] retired status renewal form as prescribed by the Board;

(2) a passing score on the online jurisprudence exam;

(3) the retired status renewal fee and any late fees that [fee which] may be due; and

(4) completion of 6 hours of [Type 2] continuing education each license renewal period, as described in Chapter 367 [§367.1] of this title (relating to Continuing Education).

(e) Requirements for return to active status. A licensee who has been on retired status less than one year must submit the regular license renewal fee and the late fee as described in §370.1 of this title (relating to License Renewal). A licensee who has been on retired status for [more than] one year or more must follow the procedures for §370.3 of this title (relating to Restoration of Texas License). [Licensee.]

(f) The occupational therapy practitioner may continue to renew the retired status license indefinitely.

(g) Licensees on retired status are subject to the audit of continuing education as described [as described] in §367.3 of this title (relating to Continuing Education Audit).

(h) A retired occupational therapy practitioner is subject to disciplinary action under the OT Practice Act.

(i) Licensees on retired status may provide occupational therapy services according to the terms of the license upon online verification of current licensure and license expiration date from the Board's license verification web page. The Board will maintain a secure resource for verification of license status and expiration date on its website.

(j) The retired status fees and any late fees as set by the Executive Council are nonrefundable.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601129

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 17, 2016

For further information, please call: (512) 305-6900

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CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §372.1, concerning the provision of services. The amendment includes clarifications regarding the provision of services and would add telehealth as a mode of occupational therapy service delivery. The amendment would add language specifying that the occupational therapist is responsible for determining whether any aspect of the provision of services may be conducted via telehealth or must be conducted in person. The amendment would also add the provision that the initial evaluation for a medical condition must be conducted in person and may not be conducted via telehealth. The amendment would add language allowing for the evaluation for a non-medical condition and for the intervention for a medical or non-medical condition to be provided via telehealth. The amendment would, furthermore, add the provision that devices that are in sustained skin contact with the client (including but not limited to wheelchair positioning devices, splints, hot/cold packs, and therapeutic tape) require the on-site and attending presence of the occupational therapy practitioner for any initial applications and that the occupational therapy practitioner is responsible for determining the need to be on-site and attending for subsequent applications or modifications. Proposed amendments to §362.1, concerning definitions, and §373.1, concerning supervision of non-licensed personnel, have also been submitted to the *Texas Register* for publication regarding the inclusion of telehealth in the Board Rules as a mode of occupational therapy service delivery. The proposed amendment to §372.1, in addition, clarifies that occupational therapists may provide consultation or monitored services, or screen or evaluate the client to determine the need for occupational therapy services without a referral and that a screening, consultation, or monitored services may be performed by an occupational therapy practitioner. The amendment, in addition, clarifies that an occupational therapist must exercise professional judgment to determine cessation or continuation of intervention without a receipt of the written referral. The amendment contains further cleanups and grammatical revisions, as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline has also determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendment may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§372.1. Provision of Services.

(a) The occupational therapist is responsible for determining whether any aspect of the provision of services may be conducted via telehealth or must be conducted in person.

(b) [(a)] Medical Conditions.

(1) Occupational therapists may provide consultation or monitored services, or screen or evaluate the client [patient/client] to determine the need for occupational therapy services without a referral.

(2) The initial evaluation for a medical condition must be conducted in person and may not be conducted via telehealth.

(3) [(2)] Intervention for a medical condition by an occupational therapy practitioner requires a referral from a licensed referral source.

(4) [(3)] The referral may be an oral or signed written order. The occupational therapy practitioner must ensure that all oral orders are followed with a signed written order.

(5) [(4)] If a written referral signed by the referral source is not received by the third intervention [treatment] or within two weeks from the receipt of the oral referral, whichever is later, the occupational therapist must have documented evidence of attempt(s) to contact the referral source for the written referral (e.g., registered letter, fax, certified letter, email, [return receipt] etc.). The occupational therapist must exercise professional judgment to determine cessation or continuation of intervention without [treatment with] a receipt of the written referral.

(c) [(b)] Non-Medical Conditions.

(1) Consultation, monitored services, screening, and evaluation for need of services may be provided without a referral.

(2) Non-medical conditions do not require a referral. However, a referral must be requested at any time during the evaluation or intervention [treatment] process when necessary to ensure [insure] the safety and welfare of the client [consumer].

(d) Screening, Consultation, and Monitored Services. A screening, consultation, or monitored services may be performed by an occupational therapy practitioner.

[(e) Screening. A screening may be performed by an occupational therapy practitioner.]

(e) [(d)] Evaluation.

(1) Only an occupational therapist may perform an initial [the] evaluation or any re-evaluations.

(2) An occupational therapy plan of care must be based on an occupational therapy evaluation.

(3) The occupational therapist must have [face-to-face,] real time interaction with the [patient or] client during the evaluation process either in person or via telehealth.

(4) The occupational therapist may delegate to an occupational therapy assistant or temporary licensee the collection of data for the assessment. The occupational therapist is responsible for the accuracy of the data collected by the assistant.

(f) [(e)] Plan of Care.

(1) Only an occupational therapist may initiate, develop, modify or complete an occupational therapy plan of care. It is a vio-

lation of the OT Practice Act for anyone other than the evaluating or treating occupational therapist to dictate, or attempt to dictate, when occupational therapy services should or should not be provided, the nature and frequency of services that are provided, when the client [patient] should be discharged, or any other aspect of the provision of occupational therapy as set out in the OT Act and Rules.

(2) The occupational therapist and an occupational therapy assistant may work jointly to revise the short-term goals, but the final determination resides with the occupational therapist. Revisions to the plan of care and goals must be documented by the occupational therapist and/or occupational therapy assistant to reflect revisions at the time of the change.

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy practitioners may implement the written plan of care once it is completed by the occupational therapist.

(5) Only the occupational therapy practitioner may train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The occupational therapist is responsible for determining whether intervention is needed and if a referral is required for occupational therapy intervention.

(7) The occupational therapy practitioners must have [face-to-face,] real time interaction with the [patient or] client during the intervention process either in person or via telehealth.

(8) Devices that are in sustained skin contact with the client (including but not limited to wheelchair positioning devices, splints, hot/cold packs, and therapeutic tape) require the on-site and attending presence of the occupational therapy practitioner for any initial applications. The occupational therapy practitioner is responsible for determining the need to be on-site and attending for subsequent applications or modifications.

(9) [(8)] Except where otherwise restricted by rule, the supervising occupational therapist may only delegate to an occupational therapy assistant or temporary licensee tasks that they both agree are within the competency level of that occupational therapy assistant or temporary licensee.

(g) [(f)] Documentation.

(1) The client's [patient's/client's] records include the medical referral, if required, [;] and the plan of care. The plan of care includes the initial examination and evaluation; the goals and any updates or change of the goals; the documentation of each intervention session by the OT or OTA providing the service; progress notes and [;] any re-evaluations, if required; any written communication; and the discharge documentation.

(2) The licensee providing occupational therapy services must document for each intervention session. The documentation must accurately reflect the intervention, decline of intervention, and/or modalities provided.

(3) The occupational therapy assistant must include the name of a supervising OT in each intervention note. This may not necessarily be the occupational therapist who wrote the plan of care, but an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. If this requirement is not met, the occupational therapy assistant may not provide services.

[(3) The occupational therapy assistant must include the name of his or her available supervising occupational therapist in each intervention note. If there is not a current supervising occupational therapist, the occupational therapy assistant cannot intervene.]

(h) [(g)] Discharge.

(1) Only an occupational therapist has the authority to discharge clients [patients] from occupational therapy services. The discharge is based on whether the [patient or] client has achieved predetermined goals, has achieved maximum benefit from occupational therapy services, [;] or when other circumstances warrant discontinuation of occupational therapy services.

(2) The occupational therapist must review any information from the occupational therapy assistant(s), determine if goals were met or not, complete and sign the discharge documentation, and/or make recommendations for any further needs of the client [patient] in another continuum of care.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601124

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 17, 2016

For further information, please call: (512) 305-6900



40 TAC §372.2

The Texas Board of Occupational Therapy Examiners proposes a new rule, §372.2, concerning general purpose occupation-based instruction. The new section would specify that occupational therapy practitioners may develop or facilitate general purpose, occupation-based groups or classes and that these services do not require individualized evaluation and plan of care services but practitioners may develop goals or curriculums for the group as a whole. The new rule would add that if a participant requires individualized occupational therapy services, a referral must be made to an occupational therapist for the provision of occupational therapy services in accordance with §372.1, concerning provision of services. The new section would note that supervision requirements for services provided pursuant to this section shall be completed in accordance with §373.3, concerning supervision of an occupational therapy assistant. Proposed amendments to §373.3 and to §376.5, concerning exemptions to registration, with regard to facilities registered with the Board, have also been submitted for publication in the *Texas Register* with regard to proposed new §372.2.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline has also determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed rule may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that this proposed rule is published in the *Texas Register*.

The new rule is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§372.2. General Purpose Occupation-Based Instruction.

(a) Occupational therapy practitioners may develop or facilitate general purpose, occupation-based groups or classes including but not limited to handwriting groups, parent-child education classes, wellness-focused activities for facility residents, aquatics exercise groups, and cooking for diabetics classes.

(b) These services do not require individualized evaluation and plan of care services but practitioners may develop goals or curriculums for the group as a whole. However, if a participant requires individualized occupational therapy services, a referral must be made to an occupational therapist for the provision of occupational therapy services in accordance with §372.1 of this title (relating to Provision of Services).

(c) Supervision requirements for services provided pursuant to this section shall be completed in accordance with §373.3 of this title (relating to Supervision of an Occupational Therapy Assistant).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601126

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 17, 2016

For further information, please call: (512) 305-6900



CHAPTER 373. SUPERVISION

40 TAC §373.1, §373.3

The Texas Board of Occupational Therapy Examiners proposes amendments to §373.1 and §373.3, concerning supervision of non-licensed personnel and supervision of an occupational therapy assistant. The amendment to §373.1 would clarify the supervision requirements for non-licensed personnel in general and with regard to the use of non-licensed personnel during the provision of occupational therapy services via telehealth. The amendment would remove language that close personal supervision implies direct, on-site contact whereby the supervising occupational therapy licensee is able to respond immediately to the needs of the patient. The amendment would add language that supervision for occupational therapy aides as defined by the Practice Act, §454.002, concerning definitions, is on-site contact whereby the supervising occupational therapy practitioner is able to respond immediately to the needs of the client. The

amendment would also add the provision that supervision of other non-licensed personnel either on-site or via telehealth requires that the occupational therapy practitioner maintain line of sight. Proposed amendments to §362.1, concerning definitions, and §372.1, concerning provision of services, have also been submitted to the *Texas Register* for publication regarding the inclusion of telehealth in the Board Rules as a mode of occupational therapy service delivery.

The proposed amendment to §373.3 includes language adding that up to half of the required interactive supervision hours for an occupational therapy assistant may be completed via visual and auditory, synchronous, real time, interactive electronic information or communications technologies. The amendment also includes revisions to the required supervision hours for occupational therapy assistants, adding a category pertaining to those working twenty or fewer hours during a given month. With regard to the requirement that the occupational therapy assistant must include the name of a supervising OT in each intervention note, language has been added in the proposal that this requirement is not applicable to instruction provided pursuant to proposed new §372.2, concerning general purpose occupation-based instruction. The amendment, in addition, includes the provision that when general purpose occupation-based instruction is being provided pursuant to proposed new §372.2, the OT must approve the curricular goals/program prior to the OTA's initiating instruction. The proposed new §372.2 and a proposed amendment to §376.5, concerning exemptions to registration, with regard to facilities registered with the Board, have also been submitted for publication in the *Texas Register* with regard to proposed new §372.2.

The proposed amendments include cleanups and grammatical revisions, as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Maline has also determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that these proposed amendments are published in the *Texas Register*.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§373.1. Supervision of Non-Licensed Personnel.

(a) Occupational Therapists are fully responsible for the planning and delivery of occupational therapy services. They may use non-licensed personnel to extend their services; however, the non-li-

censed personnel must be under the supervision of an occupational therapy practitioner.

(b) Supervision in this section for occupational therapy aides as defined by the Practice Act, §454.002 (relating to Definitions), is on-site contact whereby the supervising occupational therapy practitioner is able to respond immediately to the needs of the client.

(c) Supervision of other non-licensed personnel either on-site or via telehealth requires that the occupational therapy practitioner maintain line of sight.

[(b) Close Personal Supervision implies direct, on-site contact whereby the supervising occupational therapy licensee is able to respond immediately to the needs of the patient. This type of supervision is required for non-licensed personnel providing support services to the occupational therapy practitioners.]

(d) [(e)] When occupational therapy practitioners delegate occupational therapy tasks to non-licensed personnel, the occupational therapy practitioners are responsible for ensuring that this person is adequately trained in the tasks delegated.

(e) [(d)] The occupational [Occupational] therapy practitioners providing the intervention [treatment] must interact with the client [patient] regarding the client's [patient's] condition, progress, and/or achievement of goals during each intervention [treatment] session.

(f) [(e)] Delegation of tasks to non-licensed personnel includes but is [it] not limited to:

- (1) routine department maintenance;
- (2) transportation of clients [patients/clients];
- (3) preparation or set up of intervention [treatment] equipment and work area;
- (4) assisting clients [patients/clients] with their personal needs during the intervention [treatment];
- (5) assisting in the construction of adaptive/assistive equipment and splints. The licensee must be on-site and attending for any initial applications to the client [patient];
- (6) carrying out a predetermined segment or task in the client's [patient's] care for which the client [patient] has demonstrated some previous performance ability in executing the task.

(g) [(f)] The Non-Licensed Personnel may not:

- (1) perform occupational therapy evaluative procedures;
- (2) initiate, plan, adjust, or modify occupational therapy procedures;
- (3) act on behalf of the occupational therapist in any matter relating to occupational therapy which requires decision making or professional judgments;
- (4) write or sign occupational therapy documents in the permanent record. However, non-licensed personnel may record quantitative data for tasks delegated by the supervising occupational therapy practitioner. Any documentation reflecting activities by non-licensed personnel must identify the name and title of that person and the name of the supervising occupational therapy practitioner.

§373.3. Supervision of an Occupational Therapy Assistant.

(a) An occupational therapy assistant shall provide occupational therapy services only under the supervision of an occupational therapist(s).

(b) Supervision of an occupational therapy assistant in all settings includes:

(1) Supervision Form: For each employer, the occupational therapy assistant must submit the Occupational Therapy Assistant Supervision form with the employer information and name and license number of one of the occupational therapists working for the employer who will be providing supervision.

(2) Supervision Log and Supervision Hours:

(A) The occupational therapy assistant must complete supervision hours each month, which must be recorded on the Supervision Log. The Supervision Log is kept by the occupational therapy assistant and signed by the occupational therapist(s) when supervision is given. The occupational therapist(s) or employer may request a copy of the Supervision Log.

(B) All of the occupational therapists, whether working full time, part time, or PRN (i.e., working on an as-needed basis), who delegate to the occupational therapy assistant must participate in the supervision hours, whether on a shared or rotational basis.

(C) For each employer, the occupational therapy assistant must complete a separate Supervision Log and must complete the specified supervision hours, in addition to all other requirements. Supervision hours for different employers may not be combined.

(D) For those months when the licensee does not work as an occupational therapy assistant, he or she shall write N/A in the Supervision Log.

(E) Supervision Logs are subject to audit by the Board.

(F) Occupational therapy assistants must complete these types of supervision per month according to the following table:

(i) Frequent Communication Supervision: frequent communication between the supervising occupational therapist(s) and occupational therapy assistant including, but not limited to, communication by electronic/communications technology methods, written report, and conference, including review of progress of clients assigned, plus

(ii) Interactive Supervision: interactive supervision during which the occupational therapist[s] who is physically present with the occupational therapy assistant[s] directly observes the occupational therapy assistant providing services to one or more clients. Up to half of the required interactive supervision hours may be completed via visual and auditory, synchronous, real time, interactive electronic information or communications technologies.

Figure: 40 TAC §373.3(b)(2)(F)(ii)
[Figure: 40 TAC §373.3(b)(2)(F)(ii)]

(3) The occupational therapy assistant must include the name of a supervising OT in each intervention note. This may not necessarily be the occupational therapist who wrote the plan of care, but an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. If this requirement is not met, the occupational therapy assistant may not provide services. This provision is not applicable to instruction provided pursuant to §372.2 of this title (relating to General Purpose Occupation-Based Instruction).

(4) When general purpose occupation-based instruction is being provided pursuant to §372.2, the OT must approve the curricular goals/program prior to the OTA's initiating instruction.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601125
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 305-6900

CHAPTER 376. REGISTRATION OF FACILITIES

40 TAC §376.5

The Texas Board of Occupational Therapy Examiners proposes an amendment to §376.5, concerning exemptions to registration. The amendment would add language specifying that if a facility only offers services pursuant to proposed new §372.2, concerning general purpose occupation-based instruction, then the facility is exempted from the requirement to register the facility with the Board. The proposed new §372.2 and a proposed amendment to §373.3, concerning supervision of an occupational therapy assistant, have also been submitted to the *Texas Register* for publication with regard to proposed new §372.2.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline has also determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendment may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§376.5. Exemptions to Registration.

A facility licensed under Subtitle B, Title 4, Health and Safety Code, is exempt from this definition, i.e., hospitals, nursing homes, ambulatory surgical centers, birthing centers, abortion, continuing care, personal care, and special care facilities. Colleges, universities, schools, home health settings, and settings where Early Childhood Intervention (ECI) services take place are exempted from registration. If a facility only offers services pursuant to §372.2 of this title (relating to General Purpose Occupation-Based Instruction), then the facility is exempted from registration. These types of facilities are automatically exempt and are not required to obtain a formal exemption from the Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2016.

TRD-201601127
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 17, 2016
For further information, please call: (512) 305-6900

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 607. PUBLIC RETIREMENT SYSTEM MINIMUM EDUCATIONAL TRAINING PROGRAM

The State Pension Review Board (the "Board" or "PRB") proposes amendments to Title 40, Part 6, Chapter 607, Subchapter B, §607.110, concerning Minimum Educational Training Requirements; Subchapter C, §607.120, concerning Program Standards for All Sponsors; and Subchapter D, §607.140, concerning Public Retirement System Reporting.

BACKGROUND AND PURPOSE

In accordance with Government Code, §801.211, the Board established an educational training program for trustees and system administrators of Texas public retirement systems under Chapter 607. Since the adoption of the rules, the Board has received comments and questions from public retirement systems and education providers (sponsors) regarding the applicability of certain requirements. The purpose of the proposed amendments is to address the comments received by the Board. The amendments to §§607.110, 607.120, and 607.140 are intended to make the following changes: allow flexibility for first year of service training completed under the Minimum Educational Training (MET) requirements, lend clarity to program standards for sponsors providing online or electronically-delivered training, and update and clarify compliance reporting requirements.

SECTION-BY-SECTION OVERVIEW

The proposed amendments to §607.110 are intended to allow flexibility for Minimum Educational Training (MET) completion by trustees and system administrators prior to beginning the first year of service. Currently, §607.110 does not allow a trustee or system administrator to receive credit for MET until the first day of service. The Board received comments from public retirement systems citing scenarios in which a trustee may want to attend an MET activity in core content areas prior to officially assuming position on the system's board. In response to these comments, the Board proposed to add a new subsection §607.110(c), which would allow the Board to accept a trustee or system administrator's successfully completed MET activity up to six months prior to beginning service on a system's board or the system administrator's hiring date.

The proposed amendments to §607.120 are intended to clarify online or electronically-delivered training standards for MET activities offered by sponsors. For MET activities to be more

Figure: 28 TAC §34.1302(f)

CODE	VIOLATION	FINE
2154.252(b)	Offering 1.4G fireworks for sale from other than an authorized retail location	\$1,000.00
2154.252(d)	Sells fireworks to person who does not hold license or permit	\$1,000.00
34.815(b)(1)	Purchase of 1.4G Fireworks from an unlicensed distributor or jobber.	\$500.00
2154.201(a)	Issue other permit to a person under 18 years old.	\$500.00
34.815(c)(1)	Failed to return permits by March 1 st	\$100.00
34.832(16)	No site plan on file with SFMO	\$1,000.00
34.809(a)	Conduct 1.3G display without a permit	\$3,000.00
34.809(a)	Conduct a display without the appropriate licensed operator	\$3,000.00
34.826(c)	Failed to conduct display in compliance with NFPA 1123	\$500.00- \$1,000.00
34.826(f)	Failed to conduct a proximate display in compliance with NFPA 1126	\$500.00- \$1,000.00
34.826(h)	Used a flame effect and failed to comply with NFPA 160	\$500.00- \$1,000.00

Figure: 40 TAC §373.3(b)(2)(F)(ii)

OTA Required Supervision Hours			
OTAs working 128 or more hours during a given month:	OTAs working between 70-127 hours during a given month:	OTAs working between 69-21 [or fewer] hours during a given month:	OTAs working 20 or fewer hours during a given month:
6 hours of frequent communication supervision	3 hours of frequent communication supervision	2 hours of frequent communication supervision	1 hour of frequent communication supervision
2 hours of interactive supervision	1 hour of interactive supervision	1 hour of interactive supervision	30 minutes of interactive supervision